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ORIGINAL PAPER

Document collections, mobilized regulations, and the making of customary law at the end of the Middle Ages

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Abstract Using late medieval examples from Switzerland, this paper argues that the emergence of formally organized archives around 1500 was part of an important shift in how documents could be deployed. However, this shift was not away from an oral and toward a literate culture, as argued in some earlier studies, but rather away from seeing documents as testimony that reminded a community about past authoritative actors, and toward relating the texts of documents to other texts, that is, to contexts. This shift took place largely through the appropriation of methods for using and organizing written material that had been developed in the realms of scholastic theology and liturgy, and applying them to secular lordship and administration. These methods provided new models for organizing collections of parchments and papers into connected archives and gave rise to new forms of text collection such as reorganized versions of law books (*Spiegel*, *Coutumiers*) containing new search tools such as tables of contents (capitulationes) and indices (*abecedaria*). Individual charters and scattered legal norms were also organized into *textus–glossae* structures in larger and smaller administrative units. In the Swiss case, the contextualization of legal texts was accompanied by an increased attribution of authority to 'custom' in general, because the community-oriented attribution of meaning found in earlier use was lost. Ultimately, recasting individual documents as part of larger textual contexts increased the power of rulers and ushered in an age of lawyers and of archives.

Keywords Books · Administrative culture · Middle Ages · Switzerland · Use of writing

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Introduction

In the fall of 1420, the bishop of the city of Lausanne on the shores of Lake Geneva changed the silver proportion in the local coinage. This prompted harsh protest from the cathedral chapter and the city council of Lausanne. They claimed that the bishop had no right to make decisions concerning the mint without their consent. Representatives of both the bishop and his opponents met to settle the conflict. According to the proceedings of that meeting, both parties tried to support their positions with written records that they had fetched from the archives (Anex-Cabanis and Poudret 1977, pp. 498–499).

The chapter and the city displayed the town charter, which contains a paragraph on the city's and the chapter's prerogative of coinage (Anex-Cabanis and Poudret 1977, p. 225 § 65). Surprisingly, however, no one seems to have referred to or quoted from the paragraph in question. Instead, the proceedings show that representatives talked at great length about external features of the charter as an artifact, relating this to why they thought it was authoritative: they pointed to the seal that had been attached by the bishop's predecessor and reminded the sitting bishop that he, upon entering his office, had taken his oath with his hand on this piece of parchment. The representatives of the bishop, for their part, held up a 20-year-old contract between one of the bishop's predecessors and the master of the mint. The bishop's speaker pointed to the signature at the bottom of the contract and reminded everybody that this was the handwriting of one of the town's most renowned notaries, who had been a secretary of the previous bishop. Moreover, he said, it had been kept not in his archive but in the one of his opponent in this quarrel, the chapter, which kept it in the chest reserved for its most precious charters.

Resorting to this latter document turned out to have been a mistake. The bishop's opponents demanded that the contract be read out verbatim. To the bishop's embarrassment, the text turned out to prove exactly the opposite of what he had claimed, namely that decisions about the mint required the consent of the city and the chapter. Had the bishop and his advisors been pushing their luck, hoping that no one would ask about the precise wording of the contract? Or had they simply failed to read closely themselves? In any event, we must not rush to attribute the anecdote to some kind of undeveloped literacy or archaic oral culture. In the fifteenth century, both the bishops of Lausanne and most of the canons in their chapter were highly educated men, many trained at universities in France and Northern Italy (Morerod 1987). The anecdote, rather, illustrates a characteristic feature of the use of documents in political negotiations in the late Middle Ages: the exact textual content was not necessarily the first and foremost concern. At least as important were the document's physical presence, the location where it was kept, its material characteristics, its appearance, format, seals, and signatures (Teuscher 2007; Rauschert 2006; Weber 2003). All of this provided points of departure for talking about the people who had issued it or about the acts and rituals in which it had been used and reaffirmed since then. With Bedos-Rezak (2002, p. 43), we can say that the focal point of medieval documentary practices was not original documents, but the acts they referred to.

With regard to the title of this volume, "in and out of the archives," this article is more concerned with the in and the out than with the archives as such. In what follows, I will try to relate the emergence of the first archives that were consistently organized—according to our present understanding—to broader changes in how documents and regulations were collected and used in political and juridical contentions around 1500.

In the historiography, changes in the use of documents have long been described primarily in terms of a passage from an oral to a literate culture. This is how the development between the early and the late Middle Ages was conceptualized by the groundbreaking studies of Goody (1986, 2000), Clanchy (1993), and others (e.g., Stock 1983), who pioneered research into the cultural consequences of the growing use of writing at the end of the Middle Ages. They described developments during the Middle Ages in terms of transitions from memory to written record, from trust to control, from ritual to contract, and from custom to law. Along the same lines, they tended to categorize older ways of using written documents as 'less' and newer ones as 'more' literate. Such categorizations were built on the often implicit assumption that changes in the use of writing resulted from a collective learning process, in the course of which people became increasingly capable of utilizing the possibilities inherent in the technology of writing. This line of thought accommodated comparisons between the spread of writing during the Western Middle Ages and the alphabetization of previously non-literate societies of the so-called third world during the nineteenth and twentieth centuries. Jack Goody, in particular, placed literacy at the core of modernization narratives—with all the problems this implies, most notably the assumption that the West in some sense is ahead in a development that must be reiterated by all developing societies (for critical discussion of this approach: Street 1993; Probst 1992; Guy 1994; Keller 2002).

The emergence of consistently organized archives during the last decades of the Middle Ages can, of course, also be described as progress coming as the result of chanceries' and clerks' increasing sophistication in handling written documents. But this interpretation certainly misses the point when it is tied to the assumption that earlier forms of keeping records were the expression of an oral culture. To understand changes in the use of writing in terms of a transition from an oral to a literate culture is fraught with theoretical problems. How can we conceive of Christian medieval Europe, with its sophisticated religious book culture, as an 'oral society'? Even if a majority of Europeans in the Early Middle Ages were illiterate, their religious practices were strongly oriented toward the written word (Keller 1992a, b; Kuchenbuch 1995). Moreover, the focus on a passage from oral to written denies the dynamic character of a writing culture that underwent important changes in the course of the Middle Ages. These changes were of many different kinds. As far as the political and juridical spheres are concerned, a number of them related to transfers of cultural techniques from the sacred to the profane sphere. Ways of using and organizing written material that had originally been developed in the realms of theology and liturgy were increasingly applied in secular lordship and administration—which profoundly changed notions of secular order.

I will try to approach some of these changes through a simplified model that draws a distinction between an 'old' and a 'new' style of using documents, and

between related techniques for storing them for future use. The example from Lausanne that I began with illustrates the old style. Its characteristic feature was that documents gained meaning and authority by being related to people and acts in the past. The new style, in contrast, included a stronger focus on the textual content and more systematic attempts to relate texts to other texts; that is, to put them into context in the truest sense of the word. This distinction of styles is at best *idealtypisch*, ideal–typical, in Weber's terms. Many examples of the use of documents can be attributed to both or neither of the styles. Moreover, we should not think of these styles in terms of a simple temporal succession, since each also had affinities with different kinds of situations. Whereas the old style was better suited for ritualized negotiations in public, the new one was adapted to the inner activities of the emerging bureaucracies and to situations that involved lawyers, notaries, and officers who were familiar with learned law. Such situations can, however, be adequately associated with the 'new' style in that they became increasingly important in politics toward the end of the Middle Ages. The point of making this distinction is thus to explore interdependencies between the diffusion of particular techniques of document organization, new ways of using documents, and changes in underlying perceptions of the legal order.

In what follows, I will begin by recalling some principal changes in the organization of archives in the examined region around 1500. Subsequently, I will turn to a different kind of collections of norms, namely the so-called *Rechtsbücher* (law books). This genre appears to have been an actual vanguard and field of experimentation in organizing legal and administrative knowledge. I will dwell in particular on how these books provided models for collecting larger bodies of written material. Finally, I shall address how new practices of collecting were related to both changes in the conceptions of political order and to shifts in control over documents.

Archives

I will focus on archives and practices of using documents in what is today Switzerland. In the Middle Ages, the German-speaking parts of this region were dominated by city-states like Bern and Zürich, while large sections of the French-speaking areas belonged to the territory of the counts of Savoy, which included areas on both sides of the Alps in today's Italy, France, and Switzerland (Sablonier 1998; Paravicini Bagliani et al. 1997). With regard to its political structure, this whole area represented a transition zone between Northern Italy with its political landscape of city-states, and a central Europe dominated by counties and duchies. A still prevailing model in literacy studies suggests trajectories from orality to literacy that were basically similar, but occurred at different paces in different regions of Europe. According to that model the north of Switzerland along with most areas in today's Germany remained long attached to oral culture and custom (e.g., Vollrath 1995; Prosser 1991), while the south and west were more in pace with Northern Italy, England, and the Flemish Cities that had already moved further toward literacy, and modern law and administration (Keller 1992a, b; Howell 1998). While

there is little doubt that the spread of administrative literacy occurred later in the north, this article argues that the use of writing early in this development had less to do with oral culture or a system of custom than with a different kind of literacy, i.e., with styles of using documents that that have since become unfamiliar.

I can be brief in dealing with the reorganizations of archives around 1500, since these have been thoroughly examined by Rück (1970, 1971, 1975) and Head (2000, 2003, 2007; cf. also Contamine 1989). To sum up: the region experienced a general trend to reorganize archives according to a system called ideal-topographical. Among the first continental princes to adopt the system in the fourteenth century were the kings of France and the counts of Savoy. The German-speaking city-states followed suit in the sixteenth century. The basic principle was to organize archive inventories as well as the physical space of the archive itself with its boxes, shelves, and bundles of parchment according to a model of political order. Often the first boxes—and correspondingly the initial sections of the inventory—were for documents from popes, archbishops, and bishops, followed by the ones for emperors, both German and Greek, kings, princes, dukes, and cities in that order, and finally, for a territory's internal domains sorted by place.

The new ideal-topographical system had three major advantages. First, it provided a methodical and coherent manner of organizing documents that greatly facilitated finding a particular piece. From the particular point of view of administrative technique, one may therefore describe the passage to this system as progress. Second, the new system was not simply functional, but also promoted and naturalized specific ideas about political hierarchies, since it made it look as if every document had its place in such hierarchies. A third advantage has so far been less discussed: where all documents were integrated into one body, they could also all be understood as related to each other.

Before these reforms, archives had not simply been less organized, but often organized according to altogether different principles. A still prevalent model was the archive as part of the treasure, *thesaurus* (Potin 2000, 2005). Charters, in particular, were kept along with other artifacts, such as jewelry, gems, silverware, and liturgical books, preferably in the sacristy of a church. There were inventories, which rather than aiming for completeness, singled out a few particularly important pieces, and in this respect are reminiscent of medieval cartularies, books containing copies of selected charters from an archive (Guyotjeannin et al. 1993). And rather than relating documents to each other, they related each document to memorable people and events of the past, much as the bishop and his opponents had done during the conflict mentioned earlier. An interesting example of the older kind of inventory was drafted at the end of the fourteenth century in the Benedictine monastery of Lutry, close to Lausanne (Rück 1970; Wildermann 1986). The inventory contains summaries of important charters, and assigned its own little pictogram to each of them. The pictograms referred to the people who had issued the charter or were in some other way connected to it. To give some examples the wheel (French *la roue*, Latin *rota*) stands for Uldriod de Rota; the hood (French *le capuchon*) is for Jaquet Chapiton; the goat (*la chèvre*) is for Jacob Chevrot; the wine pitcher and the goblet—attention, this one works differently!—are for the tavern and Michel Tavernet (Fig. 1). The same pictograms were also drawn on the back of the charters.

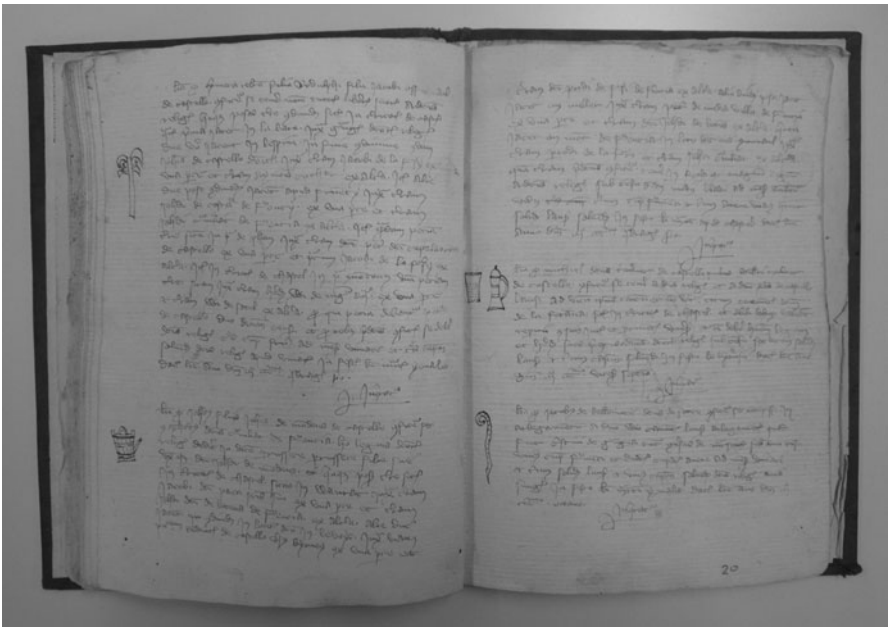

Fig. 1 The wine pitcher and the goblet. Inventory with pictograms, fourteenth century. Lausanne, Archives cantonales vaudoises, Ad 13 19v/20r

The pictorial signatures thus identified charters, without integrating them into a model of political order, nor relating them systematically to one another. The system could also not bring the charters into any kind of established sequence: the goat has its logical place neither before nor after the tavern. On the hypothetical spectrum from an oral to a literate culture, one might speculate that the pictograms served the needs of illiterates—but why would illiterates use a written inventory to find written documents? It is more convincing to explain the pictograms against the background of the old style of using documents: they identified charters by relating them to individuals and their agreements.

The same charters are also marked with younger alphanumeric signatures. These were added in the sixteenth century and indicate that the archive at that point was reorganized according to an ideal-topographic system (Rück 1971). During the early modern period, archives began experimenting further with the systematization of documents, in part by dividing them into groups that were independent from shelves and boxes. Some emulated the disposition of scholastic books with a division into *partes*, and subdivisions into *capites*, *articuli*, and *numeri*. By the eighteenth century, most major archives disposed of functional systems of cross-reference or alphabetical indexing that allowed finding documents on a given topic across different holdings. This was the result of a long development, in the course of which it became continually easier to retrieve documents according to topics, and to relate them to each other in an almost infinite number of ways. This removed them further and further away from the people and the acts that had—or were only said to have—brought them about.

Law books

How did officers in secular administrations and chanceries learn about new techniques of knowledge organization, many of which were borrowed from scholastic theology and law as they were taught at contemporary universities? An important role was probably played by law books. By law books, I understand collections of legal and administrative norms, such as the famous *Sachsenspiegel* and *Schwabenspiegel* from Germany, the *Coutumiers de Normandie* or *de Bourgogne* from France, or the *Jyske Lov* or *Gragas* from Iceland. These books did not contain officially promulgated law. Their origins, rather, lay in private—to use an anachronistic term—compilations by individual scholars of the thirteenth century who collected and invented rules on inheritance, civil law, jurisdiction, and criminal law (Johanek 1987; Ebel 1990; Kümper 2004, 2009; van Dievoet 1986; Petitjean 1975; Sandvik and Sigurdsson 2005; Wolf 1996; Jacob 2001). Over time, these texts were increasingly used as guidebooks for administrators. The large numbers of copies of the books, preserved in many manuscripts, indicate that hardly any chancery lacked one or more copies (Salmon 1899/1900; Tardif 1903; Oppitz 1990). Even smaller offices must have commissioned their own copies, as indicated by extant manuscripts in which the text of a law books is combined with the family memories of middle class urban citizens, their collections of cooking recipes, or texts of private piety (e.g. Oppitz 1990, p. 558, no. 693, p. 394, no. 208, p. 885, no. 1628).

The bulk of the contents of the law books remained the same between the thirteenth and the fifteenth century. What changed was the interpretations of these texts. Among other things, they steadily gained in authority. Thus, the German *Sachsenspiegel* and even more the *Schwabenspiegel* were by the fourteenth century ascribed to the legislation of ancient German emperors (Trusen 1985; Rohrbach 2010). Additionally, the texts were organized by increasingly sophisticated techniques that had been borrowed one by one from scholastic knowledge organization. Very early on, around 1300, there emerged copies that made the texts more accessible by using a basic tool of scholastic text organization, namely the division of sections into numbered *partes* and *articuli*. In the course of the fourteenth century, ever more manuscripts were furnished with more complex search tools that directed the reader to particular contents. At about the same time, experiments emerged that related the texts of law books to other collections of legal norms, and thus created integrated systems of norms.

It is worth while taking a closer look at individual examples of how scribes who copied law books experimented with learned techniques—with very different results that illustrate the difficulties that came with attempts to apply scholastic organization to new fields of knowledge. A rather puzzling example is a manuscript from the first third of the fourteenth century that probably originated in the duchy of Braunschweig–Lüneburg (Oppitz 1990, p. 563).[1] The manuscript contains first (2r–7v) a rather simple table of contents or *capitulatio*, i.e., a list of titles of the articles of the *Sachsenspiegel* in the order of their appearance in the book. This was followed by a second list of titles that was certainly meant to be more advanced, but

[1] Heidelberg Universitätsbibliothek Cod. Pal. Germ. 167, http://diglit.ub.uni-heidelberg.de/diglit/cpg167.

on closer scrutiny turns out to have been rather convoluted (7v–10v). This index listed topical keywords and indicated the numbers of the chapters that addressed these topics. The keywords were not listed alphabetically, but divided into three groups of thematically related topics. Thus, the first group consisted of keywords such as "kinship-degrees," "dower," "debt," and "rent." The group seems to lump together matters of inheritance, property, and credit, but without bringing them under an explicit overarching label. The second group contains keywords designating individual offenses, as well as matters of acquiring free and unfree status, i.e., it is concerned, in a rather vaguely delineated manner, with problems of justice. This group still seems more coherent than the third one, which lumps together scattered topics such as rules for duels and divisions between papal and imperial power. The organization is loosely reminiscent of the one found in a medieval *summa* in the sense that it represents a summary of the contents of a sources according to the summa-authors' own principles of systematization (Metz 1998; Knoch 1999). It is hard to imagine how such a list could have been useful to find particular contents. Yet, this may not have been the point. The organization presents an appearance of sophistication. This is one of several manuscripts where learnedness in part seems to be feigned, probably in order to impress potential readers and, maybe more importantly, buyers (Seidel 2008), but also to provide a text with the status of a content that deserved being examined by scholars.

After the idiosyncratic index, the manuscript also contains an interesting experiment in relating several law books by presenting intertwined texts of the Sachsenspiegel and the *Schwabenspiegel* (Fig. 2).

The articles appear in alternating sequence; i.e., the first article of the *Sachsenspiegel* is followed by the first article of the *Schwabenspiegel*, next is the second article of the *Sachsenspiegel* followed by the second to fourth article of the *Schwabenspiegel*, and so forth. According to this pattern, the subsequent sections of the two books are continuously interleaved. The layout marks which of the two sources each paragraph is taken from: the bits of text taken from the *Sachsenspiegel* are written in larger letters than the ones taken from the *Schwabenspiegel*. This kind of layout was characteristic for manuscripts containing a canonical text (or "textus"), which appeared in larger letters accompanied by glossae, i.e., learned comments in smaller letters. To apply this method to the given case seems, however, rather exotic, not to say bizarre. While this manuscript breaks up the coherence of each of the two books, it does little to really relate their contents. There is no intrinsic connection between, say article two of the one and article two of the other book. On closer scrutiny, the book turns out to look more synoptic and organized than it actually is. The aim seems merely to have been to create a visual appearance of relatedness, with each page containing stubs of both books. And even this seems to have tired the scribe. Toward the end of the manuscript, the sequences he took from the same source became increasingly long, so that several pages in a row contained just paragraphs taken from one of the two law books.

While the example above may appear as a first experiment, the decades around 1400 brought manuscripts that borrowed more expediently from scholastic techniques of relating different sources. Now began the great period of *remissoria*, subject indices that referred to articles in different sources, and *abecedaries*. The

Fig. 2 Intertwined texts. *Sachsenspiegel/Schwabenspiegel*, fourteenth century. Heidelberg, Universitätsbibliothek, Cod. Pal. Germ. 176, 129r

latter were among the oldest compendia of knowledge that were organized consistently according to alphabetical order, very similar to modern encyclopedias. Under lemmata designating legal topics, passages from different law books were mixed to complement one another. The more advanced examples from German-speaking areas contained material from *Schwabenspiegel*, *Sachsenspiegel*, Roman law, canon law, and the statutes of individual cities (Johanek 1987). The original coherence of the books was completely dissolved in favor of a system providing easy access to rules on a particular subject—irrespective of the context in which these rules had originally been stated.

The immediate models for these legal collections were probably the *abecedaria* of moral theology, which gave excerpts from prominent theologians' work, mainly pertaining to questions relevant for lay people, under alphabetically organized keywords. Widespread examples in German were the *Rechtssumme Bruder*

Bertholds, consisting of roughly 700 translated and alphabetically organized sections of the *Summa Confessorum* of Johannes de Friburgo, or the *Buch der Tugenden*, drawing on a wider range of theological literature. Law books remained closely related to moral reflection not only in form, but also in content (Johanek 1986; Ulmschneider 1980). Thus, some of the paragraphs of the *Schwabenspiegel* or the *Coutumier de Beauvaisis* were more concerned with matters of conscience than of morality, legal norms and moral maxims were easily thrown together, and literary and chronicle texts were incorporated into the law books to edify the readers with *exempla* of moral and immoral behavior.

Many of the techniques of knowledge organization that Mary and Richard Rouse have described as great achievements of university culture around 1200 were, with a delay of one or two hundred years, applied to law books, too (Rouse and Rouse 1982). These books carried scholastic working techniques to small offices in minor cities and to remote outposts of territorial administrative systems. Law books taught people who had never been at a university or a cathedral school how to organize material according to alphanumerical sequences, how to relate different texts by *textus–glossae* structures, and how to establish systems of cross-reference or concordance that allowed the retrieval and linking of pieces of information from different sources.

Mobilizing regulations and reshaping concepts of order

Law books not only provided secular administrators with models for how to reform their archives, but became themselves tools for organizing local documents. During the fifteenth century in particular, many local chanceries commissioned manuscripts of the law books that integrated material from local archives. City charters, royal privileges, local statutes, and contracts were copied into new contexts. This often went along with re-interpretations that were carried out by integrating individual documents into the law book, with its systematic organization. A clear-cut example is provided by a *Schwabenspiegel* manuscript from the city of Fribourg in Switzerland, into which this city's charter of privileges, allegedly granted by count Hartmann of Kyburg, was integrated (Foerster and Dessonaz 2003; Kwasnitza 2010) (Fig. 3). In the copy, nothing was left of the traditional layout of a charter with its continuous body of text. Like the rest of the *Schwabenspiegel*, the charter was divided into *partes* and *articuli* with titles. Thus, the charter was no longer related to an individual and his deed, i.e., to count Hartmann and his act of granting privileges to Fribourg, but rather assimilated to a law and integrated into a larger body of norms.

Scattered local norms could be even more efficiently integrated into larger legal contexts when scribes gathered them in a "*textus–glossae*" structure. This was an essential scholastic commenting technique, classically based on a layout that showed a canonical "textus" in large script and in one block in the center of the page surrounded and framed by commenting glossae in smaller script (Powitz 1979; Illich 1993). During the high Middle Ages, this technique had been applied primarily to "textus" taken from the Holy Scripture, with comments referring to the

Fig. 3 Charter integrated into *Schwabenspiegel*, divided into partes and articuli. *Schwabenspiegel*, c. 1410. Fribourg, Archives de l'Etat. Législation et variétés 42, CXXXVIIv/CXXXVIIr

interpretations of the fathers of the church. In the course of the later Middle Ages, the role of the "textus" could be taken on by a growing number of more or less canonical writings, including the collections of canon and Roman law or the ancient philosophers (Kuchenbuch 2000; Kuchenbuch and Kleine 2006; Rohrbach 2008). In the fourteenth century, the first secular law books with glossae appeared, at first in order to relate them to the bodies of canon and roman law (Fig. 4) Kaufmann 2002, pp. XVII–XLIV; Seidel 2008, pp. 323).

In the fifteenth century, the technique moved entirely beyond the sphere of scholastic erudition. In some places, most prominently in Burgundy, law books were commented upon in "glossae" that related them to a great variety of local norms, which had come into existence under the most diverse circumstances: royal privileges, statutes issued by city councils, market rights, guild bylaws, contracts between the city and individual people, and more (Petitjean et al. 1982; Teuscher 2007, pp. 291–302) (Fig. 5). Here, too, a heterogeneous material was homogenized through its relation to one central "textus." Every little norm had to be linked to one particular passage of the "textus," and thus found its place in a whole. The result was a comprehensive network of related norms, a coherent legal order, or even a kind of a constitution *avant la lettre*.

Such practices of re-contextualizing reinforced and to some extent generated new conceptions of political order and were accompanied by a redistribution of the controlling power over documents. When scribes gathered material taken from

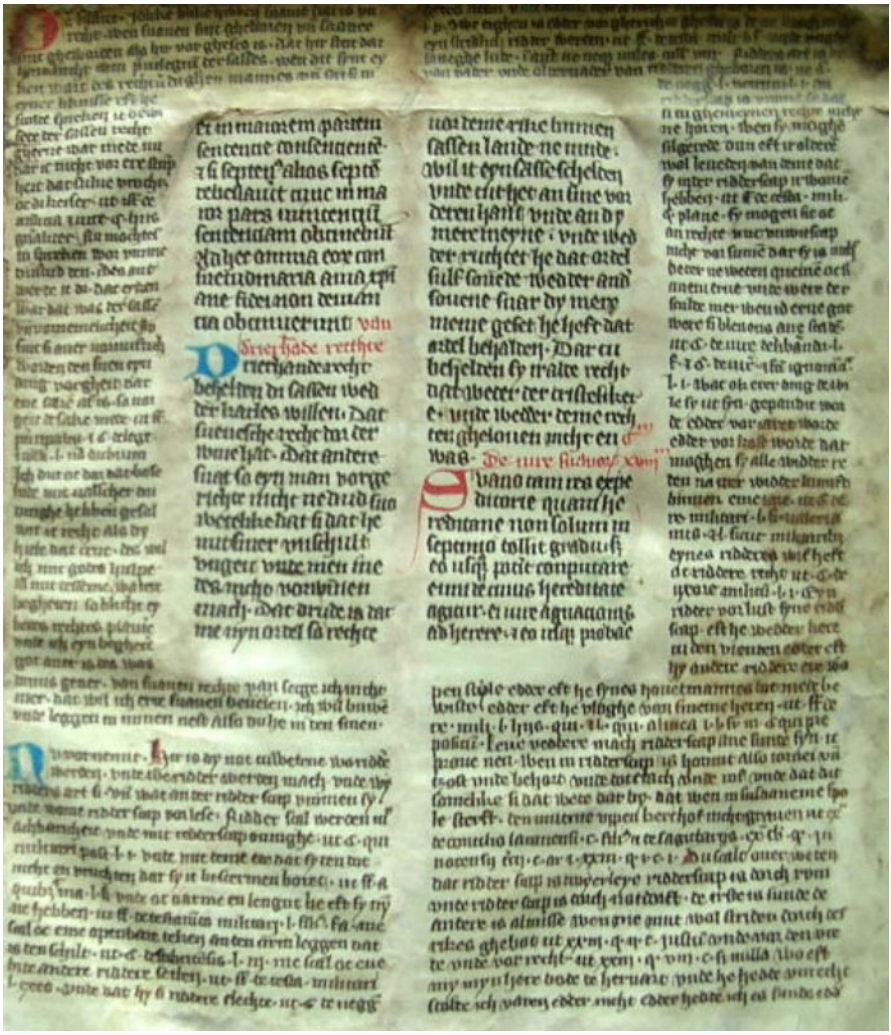

Fig. 4 Textus and glossae. *Sachsenspiegel*, c. 1400. Berlin, Staatsbibliothek SPK, ms. germ. 390

different sources, they mostly did so for utilitarian purposes. They quite simply lumped together whatever regulations they thought might be expedient for the business of exercising lordship. The few times scribes explicitly theorized about their work of homogenization, they resorted to the concept of custom, *consuetudo*. They explained that all the norms they included, both the ones taken from the body of the law books and the ones collected locally, be they written down or transmitted by word of mouth, belonged to customary law, since they all ultimately had their origin in the age-old practices and beliefs of the population—e.g., in the glossae of the Plaid Général [city statutes] of Lausanne (Anex-Cabanis and Poudret 1977, p. 241; cf. Poudret 1992, pp. 123–138). This was the conception of medieval jurists,

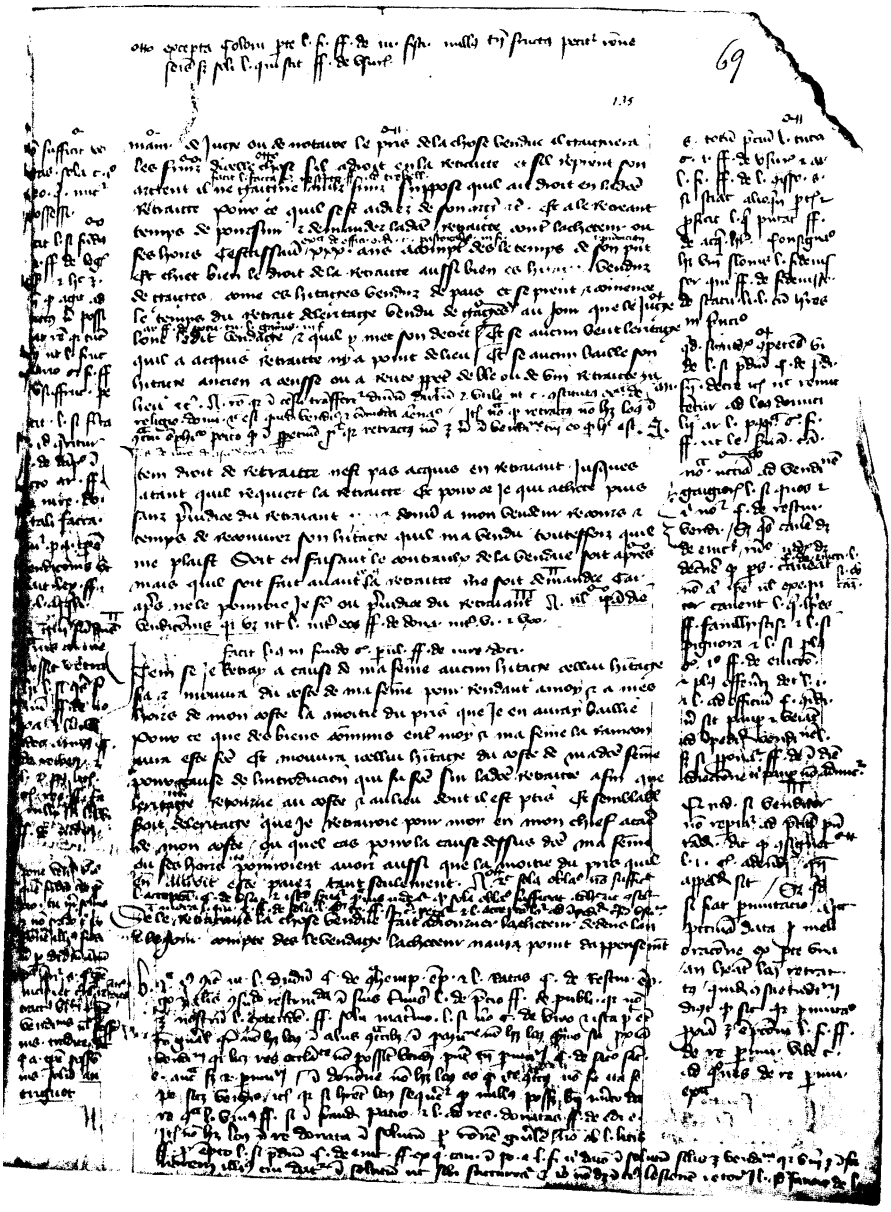

Fig. 5 Coutumier Bourguignon with glossae, fifteenth century Beaune, Bibliothèque municipale, Ms 24f, fol. 69

which scholars in the twentieth century have readily integrated into their models of a historical evolution and of a transition from oral to written culture. As a result, we tend to think of customary law as a vestige of an age-old culture that developed at some point during the Middle Ages from an archaic oral to a more advanced literate

stage. But paradoxically, ideas about customary law were probably nowhere as frequently invoked as in the context of innovative, highly literate techniques of establishing intertextuality. Prior to being linked in such manners, norms had usually not been seen as emanating from an age-old popular tradition, but were related to specific arrangements between individuals. In this particular sense the pre-literate, or rather pre-erudite manner of thinking about custom was rather contractual and modern seeming. Only when chanceries and scholars at the end of the Middle Ages tried to bring coherence into this material and applied scholastic techniques of text organization did they begin to refer to tradition as a common origin for the most diverse customs an in order to legitimate the establishment of an all-encompassing framework of law, a totalization of oral law (Teuscher 2007, pp. 131–149).

Quite generally, the period around 1500 witnessed a multitude of attempts at collecting copies of documents. There was, of course, nothing new about making copies of archive holdings. Since the high Middle Ages, most major ecclesiastic institutions had been commissioning cartularies, books containing copies of important charters kept in their archives. Cartularies were renewed now and then, but usually only one version was used at any given time to provide an authoritative account of the history, privileges and rights of an institution (Kosto and Winroth 2002; Guyotjeannin et al. 1993). The copy collections that began to emerge around 1500 were of an entirely different nature. Now, documents were copied into a rapidly growing number of highly specialized copy collections that were commissioned by individual officers. They gathered whatever concerned their particular office: rights of a bailiwick, fees of mills, agreements with competing lords, etc. Some officers simply began to copy local documents on the empty pages of a law book. Others filled thick volumes just with copied material. They were no longer content with charters, but collected enormously heterogeneous material.

Those who made these new collections were not very concerned about the circumstances in which the documents had originally been issued. A striking example is the frequent inclusion of protocols of witness inquiries about the rules of customary law. Since the thirteenth century, law courts in today's Switzerland had been conducting inquiries to clarify the exact content of unwritten rules under contention by litigant parties. Over time, such inquiries came to be ever more unambiguously based on the assumption that unwritten rules had to be customs, in the sense of having been observed by people since time immemorial. Moreover, courts increasingly relied on the idea that the observance of a custom could be established with the same methods that were used in criminal law to prove elements of a crime. Whenever a rule was contended among two parties, each would collect and record statements of sworn witnesses who were asked to tell anecdotes proving a habit of abiding by the respective party's version of the rule. The court would then evaluate both of the protocols and establish which version of the rule should be given the status of custom. In the fifteenth century, great numbers of these protocols—or more likely, excerpts from them—were copied into officers' collections of documents as if they were codifications of valid rules. Of course, only the protocols speaking in favor of one of two competing interpretations of custom were included, often without any indication whether this was the

interpretation that had achieved acceptance in court.[2] This practice obviously displayed little care for setting documents into the context of their origins, as had been so important in the old style.

Officers on the peripheries who made such collections theorized even less about their doings than the scribes of central chanceries. They seem simply to have incorporated all available records of norms that they expected might become useful at some point. Wherever further justification was requested, the notion of customary law provided a wonderfully convenient response that smoothed out all distinctions of context. By referring to custom, one could argue that all normative statements emanating from a region, be they recorded in old charters, in recent sentences of law courts, in the private notes of officers or in random records of unverified witness statements, represented age-old legal traditions that, despite being recorded only in scattered bits and pieces, were essential parts of a coherent body of rules. Here again, custom provided an after-the-fact legitimization of practices for collecting rules, ripping material out of context in order to mobilize it and to make it suitable for a broad range of purposes.

Some actors felt threatened by officers' habits of copying and decontextualizing documents in their large volumes. This is what one Jürg Berger experienced, who served as bailiff in a remote corner of Zurich's territory in the early sixteenth century. Berger left not only a large volume containing copies of documents pertaining to his office, but also letters that give insight into how he went about assembling his collection (Klee 2006). Among other things, Berger collected copies of bylaws, or *Weistümer*, from all the villages in his bailiwick. In one of the villages, the peasants refused to lend him this document, which apparently only existed in a single version kept in the village's archive chest.[3] The matter was urgent, given that Berger needed the document not only to integrate it into his collection, but also for negotiations with a competing territorial lord. Several letters were sent back and forth. Probably, the farmers feared that Berger would never return their document or would make changes in the autograph, although Berger promised that he would not change a single letter in the village law.

One may wonder why the parties did not agree on letting Berger come to the village to make his copy of the document under the villagers' controlling eyes. Instead, they eventually offered a compromise that followed a fairly different logic: the bailiff could take their document along to his negotiations, provided that he agreed to take two men from the village to go with the document. Here, the old and the new style clashed. The villagers remained committed to the old style, according to which a document should not be torn from its social surroundings. Their village law could only be brought to distant negotiations if the men from the village came along to ensure that the document was used according to their interpretation. The bailiff, on the other hand, embraced the new style. He collected and copied

[2] For example, in the archives of the chapter of Lausanne: Archives Cantonales Vaudoises, Va Nr. 157, C VIIa Nr. 469, Ad 19; Archives de la Ville de Lausanne H 4 cf. AVL C Va Nr. 122; for a broader example of the phenomenon, see Teuscher (2007), pp. 278–284.

[3] StAZ A 124/1 Nr. 64.

documents to make them available for various uses. By the way: Berger won. Today, the village law is copied in his collection.[4]

Conclusion

In conclusion, I would like to highlight three points. First, the end of the Middle Ages was characterized by more than a simple passage from oral to literal. Techniques of knowledge organization originally developed in scholastic scholarship were transferred to the field of local law and administration, where they were deployed to reorganize normative material in law books, archives, and collections of copies. This allowed norms to become unhinged from their specific social origins in order to attach them to prominent legal texts. Thus, scattered norms were integrated into comprehensive systems of legal order, which, in turn, are among the foundations of modern states. With regard to the use of documents, moreover, state activity was in part made operational by techniques borrowed from theology.

Second, we should rethink the notion of customary law. Customary law, understood to have emanated from common peoples' practice and beliefs, has often been seen as a vestige of an old pre-literate culture. It turns out, however, that it was exactly the most advanced techniques of organizing written material that put a new emphasis on old custom. When norms were removed from their specific social contexts, custom became an unspecified default context. Custom could assemble any number of norms, and also the totality of such norms when imagined as a coherent legal order. In this respect, customary law and the folkloristic imagery attached to it should be treated as an 'invention of tradition', an attempt to provide for the collection, mobilization, and systematization of rules in archives and volumes with roots in a past before such archives and volumes existed.

Third, new techniques of organizing documents changed existing power balances. The villagers who opposed bailiff Berger's acquisitiveness for documents openly addressed this. They feared the growing power of experts, specialized officers, notaries, and lawyers. As long as documents were interpreted in the light of particular agreements between particular people, these people themselves, as well as their successors, be they rulers or local communities, had considerable controlling power over a document's interpretations. This changed when documents were read as texts in the context of more texts. The age of archives became the age of lawyers, and of all who cared about the business of putting texts into the context of other texts.

References

Anex-Cabanis D, Poudret J-F (eds) (1977) Les sources du droit du Canton de Vaud. Moyen Âge (Xe–XVIe siècle) vol B1: Lausanne et les terres épiscopales. Schwabe, Basel

Bedos-Rezak B (2002) Towards an archaeology of the medieval charter: textual production and reproduction in northern France. In: Kosto AJ, Winroth A (eds) Charters, cartularies, and archives:

[4] StAZ F II a 185, fol. 50ss.

the preservation and transmission of documents in the medieval west. Pontifical Institute of Mediaeval Studies, Toronto, pp 43–60

Clanchy MT (1993) From memory to written record. England 1066–1307, 2nd edn. Blackwell, Oxford

Contamine P (1989). La mémoire de l'état. Les archives de la chambre des comptes du roi de France à Paris au XVe siècle. In: Media in Francia. Hérault, Maulévrier, pp 85–100

Ebel F (1990). Sachsenspiegel. In: Erler A, Kaufmann E (eds) Handwörterbuch zur deutschen Rechtsgeschichte 4. Schmidt, Berlin, col. 1228–1238

Foerster H, Dessonaz J-D (eds) (2003) Die Freiburger Handfeste von 1249: Edition und Beiträge zum gleichnamigen Kolloquium 1999 (Scrinium Friburgense 16). Universitätsverlag, Fribourg

Goody J (1986) The logic of writing and the organization of society. Cambridge University Press, Cambridge

Goody J (2000) The power of the written tradition. Smithsonian Institution Press, Washington

Guy J (1994) Making words visible. Aspects of orality, literacy, illiteracy and history in southern Africa. S Afr Hist J 31:3–27

Guyotjeannin O, Morelle L, Parisse M (eds) (1993) Les cartulaires: actes de la Table ronde organisée par l'Ecole nationale des chartes et le G.D.R. 121 du C.N.R.S. (Paris, 5–7 décembre 1991). École des chartes, Paris

Head RC (2000) Abbildungen der Herrschaft: Archivgut, Archivordnungen und die Repräsentation politischen Wissens in der frühneuzeitlichen Schweiz. In Böhler M et al (eds) Republikanische Tugend. Ausbildung eines Schweizer Nationalbewusstseins und Erziehung eines neuen Bürgers. Contribution à une nouvelle approche des lumières helvétiques. Actes du 16e colloque de l'Académie suisse des sciences humaines et sociales (Ascona, Monte Verità, Centro Stefano Franscini) 7–11 septembre 1998. Slatkine, Genève

Head R (2003) Knowing like a state: the transformation of political knowledge in Swiss archives 1450–1770. J Mod Hist 75:745–782

Head RC (2007) Mirroring governance: archives, inventories and political knowledge in early modern Switzerland and Europe. Arch Sci 7:317–329

Howell MC (1998) The marriage exchange. property, social place, and gender in cities of the low countries 1300–1550. University of Chicago Press, Chicago

Illich I (1993) In the vineyard of the text. A commentary to Hughes Didascalion. University of Chicago Press, Chicago/London

Jacob R (2001) Les coutumiers du XIIIe siècle ont-ils connu la coutume ? In: Mousnier M, Poumarède J (eds) La coutume au village dans l'Europe médiévale et moderne. Actes des XXes Journées internationales d'histoire du Centre culturel de l'abbaye de Flaran. Presses Universitaires du Mirail, Toulouse, pp 102–119

Johanek P (1986) Literaturgattung und Wirkungsgeschichte. Überlegungen zur Werkbezeichnung der "Summe" Bruder Bertholds. In: Hauck K, Kroeschell K (eds) Sprache und Recht. Beiträge zur Kulturgeschichte des Mittelalters. Festschrift für Ruth Schmidt-Wiegand zum 60. Geburtstag. Walter de Gruyter, Berlin, pp 353–373

Johanek P (1987). Rechtsschrifttum. In Glier I (ed) Geschichte der deutschen Literatur III/2, pp 396–431, 506–515

Kaufmann F-M (2002) Glossen zum Sachenspiegel-Landrecht. Buch'sche Glosse. 3 vols. (Monumentae Germaniae Historica. Fontes Iuri Germanici Antiqui. N.S. 7). Hahnsche Buchhandlung, Hannover

Keller H (1992a) Pragmatische Schriftlichkeit im Mittelalter. Erscheinungsformen und Entwicklungsstufen. In: Keller H, Grubmüller K, Staubach N (eds) Pragmatische Schriftlichkeit im Mittelalter. Erscheinungsformen und Entwicklungsstufen. Akten des Internationalen Kolloquiums 17–19. Mai 1989. Wilhelm Fink Verlag, München, pp 1–36

Keller H (1992b) Vom heiligen Buch zur Buchführung. Lebensfunktionen der Schrift im Mittelalter. Frühmittelalterliche Studien 26:1–31

Keller H (2002) L'oral et l'écrit. In Schmitt J-C, Gerhard OG (eds) Les tendances actuelles de l'histoire du Moyen Age en France et en Allemagne. Actes des colloques de Sèvres (1997) et Göttingen (1998) organisés par le Centre National de la Recherche Scientifique et le Max-Planck-Institut für Geschichte. Paris: Publications de la Sorbonne, pp 127–142

Klee D (2006) Konflikte Kommunizieren. Die Briefe des Grüninger Landvogts Jörg Berger an den Zürcher Rat (1514–1529). Chronos, Zürich

Knoch W (1999). Die theologische Summa: Zur Bedeutung einer hochmittelalterlichen Literaturgattung. In Schaefer U (ed) Artes im Mittelalter, Berlin, pp 151–160

Kosto AJ, Winroth A (eds) (2002) Charters, cartularies, and archives: the preservation and transmission of documents in the medieval west. Pontifical Institute of Mediaeval Studies, Toronto

Kuchenbuch L (1995) Die Achtung vor dem alten Buch und die Furcht vor dem Neuen. Cesarius von Milendonk erstellt 1222 eine Abschrift des Prümers Urbar von 893 bis 983. Historische Anthropologie. Kultur, Gesellschaft, Alltag, vol 3, pp 175–202

Kuchenbuch L (2000) Sind mediävistische Quellen mittelalterliche Texte? Zur Verzeitlichung fachlicher Selbstverständlichkeiten. In: Goetz H-W (ed) Die Aktualität des Mittelalters. Verlag Dr. Dieter Winkler, Bochum, pp 317–354

Kuchenbuch L, Kleine U (eds) (2006) *Textus* im Mittelalter. Komponenten und Situationen des Wortgebrauchs im schriftsemantischen Feld. Vandenhoeck & Ruprecht, Göttingen

Kümper H (2004) Der Sachsenspiegel: Eine Bibliographie. Mit einer Einleitung zu Überlieferung, Wirkung und Forschung. Bautz, Nordhausen

Kümper H (2009) Sachsenrecht. Studien zur Geschichte des Sächsischen Landrechts in Mittelalter und Früher Neuzeit. Duncker & Humblot, Berlin

Kwasnitza S (2010) Lesepraktiken, Ostentationsakte und Traditionsbildung am Beispiel der Freiburger Handfeste. In: Lutz EC, Backes M, Matter S (eds) Lesevorgänge. Prozesse des Erkennens in mittelalterlichen Texten, Bildern und Handschriften. Chronos, Zürich

Metz W (1998) Summe. In: Historisches Wörterbuch der Philosophie, vol. 10, Basel 1998, col. 588–592

Morerod J-D (1987) L'évolution du droit Vaudois au XIIIe siècle. In: Bagliani AP (ed) Ecoles et vie intellectuelle à Lausanne au Moyen Age. Université de Lausanne, Lausanne, pp 53–62

Oppitz U-D (1990–1992) Deutsche Rechtsbücher des Mittelalters. 3 vols. Böhlau, Köln/Wien

Paravicini Bagliani A, Felber J-P, Morerod J-D, Pasche V (eds) (1997) Les pays romands au Moyen Age. Payot, Lausanne

Petitjean M (1975). La coutume de Bourgogne. Des coutumiers officieux à la coutume officielle. In Mémoires de la Société de l'histoire du droit et des institutions des anciens pays bourguignons, comtois et romands 42, S. 13–20

Petitjean M, Marchand M-L, Metman J (eds) (1982) Le Coutumier Bourguignon Glosé. Editions du Centre national de la recherche scientifique, Paris

Potin Y (2000) L'état et son trésor. La science des archives à la fin du Moyen Âge. Actes de la Recherche en Sciences Sociales 133:48–52

Potin Y (2005) Le roi trésorier. Identité, fonction et légitimité des trésors royaux (France, XIII^{e}-XIV^{e} siècle). In: Burkart L, Cordez P, Mariaux PA, Potin Y (eds) Le trésor au Moyen Âge: questions et perspectives de recherche: Der Schatz im Mittelalter. Fragestellungen und Forschungsperspektiven. Presses de l'Université de Neuchâtel, Neuchâtel, pp 89–117

Poudret J-F (1992). L'attitude des coutumiers à l'égard du droit écrit en pays romands à la fin du Moyen Age. In: Iglesia Ferreirós A (ed). El dret comú i catalunya: actes del II. on Simposi Internacional, Barcelona, 31 maig–1 juny de 1991. Fundació Noguera, Barcelona, pp 123–138

Powitz G (1979) Textus cum commento. Codices manuscripti 5:80–89

Probst P (1992) Die Macht der Schrift. Zum ethnologischen Diskurs über eine populäre Denkfigur. Anthropos 87:167–182

Prosser M (1991) Spätmittelalterliche ländliche Rechtsaufzeichnungen am Oberrhein zwischen Gedächtniskultur und Schriftlichkeit. Untersuchungen am Übergang von analphabetischen zu skriptualen Überlieferungsformen im Blickfeld rechtlicher Volkskunde. Bayerische Blätter für Volkskunde, Würzburg

Rauschert J (2006) Herrschaft und Schrift. Strategien der Inszenierung und Funktionalisierung von Texten in Luzern und Bern am Ende des Mittelalters. Walter de Gruyter, Berlin

Rohrbach L (2008) Aura. Einleitung. In: Kiening C, Stercken M (eds) SchriftRäume. Dimensionen von Schrift zwischen Mittelalter und Moderne. Chronos, Zürich, pp 199–206

Rohrbach L (2010) Pragmatik in Szene gesetzt. Mediale Dimensionen spätmittelalterlicher Handschriften des Jyske Lov. Opuscula

Rouse R, Rouse M (1982) "Statim Invenire". Schools, preachers, and new attitudes to the page. In: Benson RL, Constable G (eds) Renaissance and renewal in the twelfth century. Clarendon Press, Oxford, pp 201–225

Rück P (1970) Inventare geistlicher Archive der Westschweiz um 1400: Die Priorate St. Maire und Lutry. Zeitschrift für schweizerische Kirchengeschichte 64:140–152

Rück P (1971) Die Ordnung der Herzoglichen Savoyischen Archive unter Amadeus VIII (1398–1451). Archivalische Zeitschrift 67:11–101

Rück P (1975) Les registres de l'administraton capitulaire de Lausanne (XIIIe–XVIe Siècle). Revue historique vaudoise 83:135–186
Sablonier R (1998) The Swiss confederation in the 15th century. In: The new Cambridge Medieval History 7. Cambridge University Press, Cambridge, pp 645–670
Salmon A (ed) (1899/1900) Philippe de Beaumanoir. Coutumes de Beauvaisis. Texte critique publié avec une introduction, un glossaire et une table analytique. 2 vols. Picard, Paris
Sandvik G, Sigurdsson JV (2005) Laws. In: McTurk R (ed) A companion to old Norse-Icelandic literature and culture. Blackwell, Oxford, pp 223–244
Seidel K (2008) Vorzeigen und nachschlagen. Zur Medialität und Materialität mittelalterlicher Rechtsbücher. Frühmittelalterliche Studien 42:307–328
Stock B (1983) The Implications of Literacy. Written language and models of interpretation in the eleventh ands twelfth centuries. Princeton University Press, Princeton
Street BV (1993) Introduction: the new literacy studies. In: Street BV (ed) Cross-cultural approaches to literacy. Cambridge University Press, Cambridge, pp 1–21
Tardif E-J (ed) (1903) Coutumes de la Normandie. Textes critiques. 2 vol. Rouen
Teuscher S (2007) Erzähltes Recht. Lokale Herrschaft, Verschriftlichung und Traditionsbildung im Spätmittelalter. Campus, Frankfurt a. M
Trusen W (1985) Die Rechtsspiegel und das Kaiserrecht. Zeitschrift der Savigny Stiftung für Rechtsgeschichte. Germanistische Abteilung 102:12–59
Ulmschneider H (1980) Die Rezeption deutscher kanonistischer Literatur durch mittelalterliche Rechtsbücher. Zur Wirkungsgeschichte der 'Rechtssumme' Bruder Bertholds und des 'Buchs Der Tugenden'. In: Hamm M, Ulmschneider H (eds) Die 'Rechtssumme' Bruder Bertholds. Untersuchungen 1. Max Niemeyer, Tübingen, pp 143–259
van Dievoet G (1986) Les coutumiers, les styles, les formulaires et les "artes notariae" (Typologie des sources du moyen âge occidental 48). Brepols, Turnhout
Vollrath H (1995). Rechtstexte in der oralen Rechtskultur des früheren Mittelalters. In Borgolte M (ed) Mittelalterforschung nach der Wende. R. Oldenbourg, München, pp 319–348
Weber CF (2003) Schriftstücke in der symbolischen Kommunikation zwischen Bischof Johann von Venningen (1458–1478) und der Stadt Basel. Frühmittelalterliche Studien 37:355–383
Wildermann A (1986) Lutry. In: Gilomen-Schenkel E (ed) Helvetia Sacra, Abt. 3: Die Orden mit Benediktinerregel 1.2: Frühe Klöster, die Benediktiner und die Benediktinerinnen in der Schweiz. Francke, Bern, pp 803–814
Wolf A (1996) Gesetzgebung in Europa 1100–1500. C. H. Beck'sche Verlagsbuchhandlung, München

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